

Memorandum



Date: October 7, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

Agenda Item No. 3(B)(4)

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the printed name.

Subject: Resolution Ratifying the Execution of the On-Port Rail Construction Agreement between Miami-Dade County and Florida East Coast Railway, L.L.C., for the Intermodal Rail Yard Development Relating to Obligations under a U.S. Department of Transportation Grant Program

RECOMMENDATION

It is recommended that the Board of County Commissioners ("Board") approve the accompanying resolution ratifying the executed On-Port Rail Construction Agreement (the "Agreement") between Miami-Dade County ("County") and the Florida East Coast Railway, L.L.C. ("FEC"), for the Intermodal Rail Yard Development relating to obligations under a United States Department of Transportation National Infrastructure Investments Discretionary Grant Program Agreement ("TIGER II Grant") which was previously authorized under Resolution No. R-410-11.

SCOPE

PortMiami is located within District 5 – Commissioner Bruno A. Barreiro, however the impact of this agenda item is countywide as PortMiami ("Port") is a regional asset and generates employment for residents throughout Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

Resolution R-747-11 authorized the Mayor to execute an agreement with FEC to oversee certain repairs and improvement to rail facilities at the Port up to \$25.067 million. This \$25.067 million total includes \$22.767 million from TIGER II (a federal grant program), plus \$2.3 million pledged by the Port to this project as part of the award agreement. These funds are part of the Port's Capital Improvement Program and, in the case of the \$2.3 million pledge, funded by Port revenue bonds. Maintenance costs for the Intermodal Yard over the next five years are not expected to exceed \$100,000 in the aggregate.

TRACK RECORD/MONITOR

The Seaport Department staff members responsible for monitoring the Agreement are Kevin Lynskey, Deputy Director, Elizabeth Ogden, Acting Assistant Director, Capital Development, and Becky Hope, Capital Development.

BACKGROUND

The Port's intermodal and rail reconnection project was developed jointly with the FEC and resulted in a successful award of a U.S. Department of Transportation TIGER II grant in 2010. The project entails approximately \$49 million of investment in on-port (approximately \$25 million) and off-port (approximately \$24 million) improvements. The TIGER II grant monies are available only towards on-port improvements. The on-port improvements are funded by \$22.767 million of TIGER II grant and approximately \$2.3 million of Seaport revenue bond funds.

Section 125.012 of the Florida Statutes allows the County to enter into design and construction contracts with tenants, users and service providers of the Port. As such, the Board authorized the County to enter into an agreement with the FEC, whereby FEC was to oversee certain repairs and improvements to rail facilities at the Port (Resolution No. R-747-11) on the County's behalf. FEC was selected to help manage this project to leverage their rail expertise and to take advantage of its volume rail purchasing efforts to bring down material costs for this project. FEC agreed to provide its management services without charge to the Port and to not mark-up any materials purchased on behalf of the Port's rail improvement program.

In September 2011, the Board of County Commissioners passed Resolution R-747-11 authorizing the County Mayor to enter into such agreements with the FEC as may be necessary or appropriate to complete the bascule bridge and intermodal rail yard developments at the Port as part of the TIGER II grant. The Resolution also required that any such agreements with the FEC return to the Board for its ratification.

For this purpose, the County entered into a Rail Bridge Construction Administration Agreement with the FEC, which was successfully completed in April 2013, as was previously reported to the Board. Subsequent to this agreement, the County entered into the On-Port Rail Construction Agreement (the "Agreement") which consists of three (3) primary project components: Component 1 is the upgrade of the rail approach track to and from the Rail Bascule Bridge; Component 2 consists of the design and construction of three (3) work tracks at 3,000 feet in length each; and Component 3, set out reporting requirements of said design and construction in accordance with the TIGER II grant. Components 2 and 3 are scheduled to be completed by March 31, 2015, though construction has been phased to allow limited, interim rail service since October 2013. Component 1, which consisted of an upgrade of the rail approach track to and from the Rail Bascule Bridge has been re-evaluated and eliminated from the project as unnecessary, with the \$300,000 cap for this work re-allocated to other rail yard improvements. Component 3, which was estimated to not exceed \$300,000, is now finalized to not exceed \$350,000.

Ancillary work has also been completed as part of the Port's Capital Improvement in support of the TIGER II grant program. This includes support of the Seaboard relocations required for the on-port rail project that was completed pursuant to Amendment No. 2 to the Amended and Restated Terminal Agreement between Miami-Dade County and Seaboard Marine Ltd, as authorized by this Board through Resolution No. R-640-13.

The work under the two FEC agreements (Rail Bridge Construction Administration Agreement and On-Port Rail Construction Agreement) is expected to be within the Board's \$25.067 million authorization limit. Any expenditures pursuant to the FEC agreements (Rail Bridge Construction Administration Agreement and On-Port Rail Construction Agreement) which exceeds \$25.067 million requires the approval of this Board. The Port has provided some additional design service and ancillary work on the rail project that was not part of the money expended through agreements with the FEC.

DELEGATED AUTHORITY

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond those specified in the resolution which include the Mayor or designee to execute the Agreement, in its substantial form, and to exercise the cancellation and renewal provisions.



Jack Osterholt, Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: October 7, 2014

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 3(B)(4)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 3(B)(4)

10-7-14

RESOLUTION NO. _____

RESOLUTION RATIFYING THE EXECUTED, PURSUANT
TO AUTHORITY DELEGATED PREVIOUSLY BY THE
BOARD OF COUNTY COMMISSIONERS, ON-PORT RAIL
CONSTRUCTION AGREEMENT BETWEEN MIAMI-
DADE COUNTY AND FLORIDA EAST COAST
RAILWAY, L.L.C., FOR THE INTERMODAL RAIL YARD
DEVELOPMENT RELATING TO OBLIGATIONS UNDER
A UNITED STATES DEPARTMENT OF
TRANSPORTATION GRANT PROGRAM

WHEREAS, pursuant to Resolution R-747-11, this Board previously authorized the delegation of authority to the Mayor or the Mayor's Designee to execute agreements to expend Tiger II and other federal grant funds as necessary to construct improvements to create a railroad intermodal yard at the Port of Miami; and

WHEREAS, pursuant to that grant of authority in Resolution R-747-11, the County executed the On-Port Rail Construction Agreement Between Miami-Dade County and Florida East Coast Railway dated December 21, 2012; and

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves and ratifies the executed On-Port Rail Construction Agreement between Miami-Dade County and Florida East Coast Railway, L.L.C., a copy of which is attached hereto, for the intermodal rail yard development relating to obligations under a United States Department of Transportation grant program.

The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman

Lynda Bell, Vice Chair

Bruno A. Barreiro

Jose "Pepe" Diaz

Sally A. Heyman

Jean Monestime

Sen. Javier D. Souto

Juan C. Zapata

Esteban L. Bovo, Jr.

Audrey M. Edmonson

Barbara J. Jordan

Dennis C. Moss

Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of October, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Richard Seavey

ON-PORT RAIL CONSTRUCTION ADMINISTRATION AGREEMENT

between

FLORIDA EAST COAST RAILWAY, L.L.C. and MIAMI-DADE COUNTY

This Construction Administration Agreement ("Agreement") is entered into as of Dec 21, 2012 by and between Miami-Dade County ("the County"), a political subdivision of the State of Florida, and the Florida East Coast Railway, L.L.C. ("the FEC").

WITNESSETH:

WHEREAS, the FEC currently owns, operates, and maintains hundreds of miles of railway facilities and rights of way within the State of Florida and within Miami-Dade County, including, without limitation, tracks and facilities connecting the FEC Hialeah Yard to the Dante B. Fascell Port of Miami-Dade rail bridge and on-Port rail facilities; and

WHEREAS, the County owns the Dante B. Fascell Port of Miami-Dade, a/k/a the County Seaport Department or Port of Miami ("the Port"), which serves as a vital economic engine to all of Miami-Dade County by, among other things, providing land, facilities and infrastructure utilized by the cruise and cargo industries to serve their substantial respective markets and customers; and

WHEREAS, the Federal Government awarded the County a TIGER II Grant to fund improvements to its On-Port facilities ("On-Port Project Elements") so that it can enhance transportation options such as double stacked container service for the Port's various cargo users; and

WHEREAS, the FEC and the County entered into a "Rail Improvement Grant and Limited Assumption Agreement," dated May 17, 2011 that better defines their respective obligations under the TIGER II Grant; and

WHEREAS, the FEC and the County entered into a "Rail Bridge Construction Administration Contract" dated September 20, 2011, whereby FEC will administer the Design-Build contract for the rail bascule bridge connecting the FEC tracks to the Port; and

WHEREAS, the County wishes to proceed with improvements to its On-Port Project Elements and the FEC has significant experience with track facilities such that the County desires that the FEC administer such work on its behalf; and

WHEREAS, approximately six (6) acres of the land on which the On-Port Project Elements will be constructed ("Seaboard Acres") currently are being leased to Seaboard Marine Ltd. ("Seaboard") pursuant to the Amended and Restated Terminal Agreement Between Miami-Dade County and Seaboard Marine Ltd. For Terminal Operations approved by the Board of

County Commissioners by Resolution R-599-08 on or about May 20, 2008 as amended ("Seaboard Agreement"); and

WHEREAS, the Maritime Administration ("MARAD"), which is an agency of the U.S. Department of Transportation ("U.S. DOT") that supervises the TIGER II Grant, has indicated its approval of such collaboration between the FEC and the County;

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. In addition to terms defined in the balance of this Agreement, the following capitalized terms shall have the definitions set forth below:

a. "Applicable Laws" shall mean all applicable federal, state, county, and local laws, rules, regulations, ordinances, codes, administrative, executive, implementing and other orders, governmental decrees; and tariffs, including, without limitation, all applicable statutes, rules, orders, regulations and other legal requirements listed or referenced in the Grant Agreement or any attachments or exhibits thereto.

b. "Assumption Agreement" shall mean that "Rail Improvement Grant and Limited Assumption Agreement," between the County and the FEC dated May 17, 2011.

c. "County Reporting Requirements" shall mean the sum of all reporting requirements set forth in the Grant Agreement applicable to the On-Port Project Elements.

d. "Agreement" shall mean this written On-Port Rail Construction Administration Agreement between the County and the FEC, which may be referred to herein as the "Agreement", "herein," "hereunder," or "hereof."

e. "Grant Agreement" shall mean the written grant agreement between the County and MARAD dated March 17, 2011, including all exhibits and attachments thereto, a copy of which is attached hereto for identification purposes only as Exhibit A.

f. "Rail Bridge Agreement" shall mean the Rail Bridge Construction Administration Contract dated September 20, 2011.

g. "FRA" shall mean the Federal Railroad Administration, which is an agency of the U. S. Department of Transportation.

h. "MARAD" shall mean the Maritime Administration, which is an agency of the U.S. Department of Transportation.

i. "Port Lead" shall mean the County-owned railroad track system in the Port of Miami.

j. "Reporting Requirements" shall mean any and all reports required by this Agreement in connection with the progress of the Work and the reimbursement of the same which shall at all times be in full compliance with the County's obligations under the Grant Agreement including all reimbursement and audit requirements, all as more particularly described in this agreement.

k. "Selected Contractors" shall mean the Design-Builder and the contractors selected jointly by the FEC and the County pursuant to the terms of this Agreement to perform the Work and acquire the Long-Lead Items.

l. "Work" as further defined herein, shall mean that portion of the On-Port Project Elements work as described in Section 6 below.

2. **Recitals and Exhibits.** The foregoing Recitals and the attached Exhibits are incorporated herein and made a part of this Agreement. Attachments hereto (other than exhibits) are for identification purposes only and are not incorporated herein.

3. **Effectiveness** This Agreement shall not become effective until (i) it is properly executed by both parties and (ii) receipt by the Port Director of written approval of this Agreement by MARAD, whichever is later (the "Effective Date").

4. **Term.** This Agreement shall commence on the Effective Date and end on the County's Final Acceptance of the Work except that the following obligations shall extend beyond this Term:

4.1 The FEC's obligations in connection with any claims against the Selected Contractor for warranties and latent defects;

4.2 The FEC's obligations relating to the conduct of any audit as provided in this Agreement;

4.3 Any obligation of the FEC to cooperate with the County in the prosecution of any claim against the Design-Builder or any Selected Contractors in connection with the Work; and

4.4 Any obligation of indemnity of the FEC to the extent the claims arise in connection with the Work.

5. **Scope of the FEC's Services to the County.** As will be fully described below, the FEC shall contract for and administer the design, procurement, and construction management of the rehabilitation of a portion of the existing track from the Port Bridge to the proposed intermodal facility as more particularly described in Section 6 below and in the schematic design attached hereto as Exhibit B (the "Work"). FEC will not receive any compensation or mark up

for these services and will document for the County the appropriate costs for payment to the Selected Contractors.

5.1 County Ownership of the Work. The parties agree that the County owns the Work and subject to the terms and conditions of this Agreement shall be responsible for the cost of their improvement, maintenance, and replacement after Final Acceptance.

5.2 FEC Obligations as Project Representative. The FEC shall supervise the design and construction of the Work using due diligence for completion of the work in compliance with the attached Construction Schedule, the requirements of the Assumption Agreement, all Applicable Laws (including, as applicable, those regulations promulgated by the FRA related to railroad construction), all other applicable requirements hereof and all requirements included or arising from the Grant Agreement that relate or apply to any or all of the Work. Likewise the FEC shall ensure that any of its agents, employees, contractors, subcontractors, and material suppliers (of all tiers) performs all work and tasks relating to or in connection with the Work in compliance with all such requirements.

6. Scope of the Work. The Work consists of the improvement of the County's existing railroad track system in the Port of Miami, described in the TIGER II application submitted to U.S. DOT on August 20, 2010, as described below. The Work has three components, each of which requires a separate Notice to Proceed from the County before FEC may commence work under the corresponding component.

Component 1 - The first component includes the rehabilitation of the On-Port lead rail, including the procurement and installation of railroad track on the County-owned bridge approaches of the Port Lead, and including a pedestrian crossing and two (2) roadway crossings, and additional railroad track for an interim on-Port railroad track work. In addition to the work necessary for the upgrade and protection of the roadway and pedestrian crossings, the Work will include any necessary underground utility adjustment as well as appropriate turnouts required for future working and storage track access under the Procurement process described below. The geographical limits of the Work contained within Component 1 are delineated in the attached as Exhibit C. FEC hereby acknowledges, represents and warrants that no portion of the Component 1 Work is planned to be, designed to be, or will be or take place on any portion of the Seaboard Acres. FEC shall not proceed with any Component 1 Work until the County first has issued a Notice to Proceed with Component 1 Work. Any Notice to Proceed issued by the County in connection with this Agreement shall be construed to apply only to Component 1 Work unless expressly stated otherwise. FEC hereby holds the County harmless, releases the County and agrees to indemnify the County for and from any liabilities, claims, causes of action, or penalties made or imposed by any person or entity in connection in any way with

Work performed by FEC with respect to Component 1 prior to receiving a Notice to Proceed from the County.

Component 2 - The second component of the Work consists of the design and construction of a new Intermodal Yard that will include three (3) working tracks at 3,000 feet of length each, or as feasible, for which the scope includes the design and replacement of the existing lead track, expansion of the track to parallel interim working tracks, relocation of the interim working tracks, as necessary, construction of Intermodal Yard tracks, construction of intermodal yard apron areas to support the Intermodal Yard operating equipment, construction of a drainage system, construction of a lighting system, fencing and gates required for security, demolition of existing buildings/gates, and relocation of utilities. Additionally, per the Procurement provisions of the Agreement in Paragraph 8, this Work includes the Long Lead procurement of the track work materials for the Intermodal Yard. The geographical limits of the Work contained within Component 2 are delineated in the schematic drawing attached as Exhibit B. FEC hereby acknowledges that part, or all, of the Work to be performed in connection with Component 2 will be on the Seaboard Acres and that the County currently does not have possession of, or control over, the Seaboard Acres. FEC shall not proceed with any Component 2 Work until the County has issued a Notice to Proceed with Component 2 Work expressly referencing Component 2 Work as described in this Agreement. At the County's discretion, the County may issue one Notice to Proceed for all Component 2 work or, at the County's election, may issue more than one Notice to Proceed, each of which may authorize commencement of all or part of the Component 2 work. FEC hereby holds the County harmless, releases the County and agrees to indemnify and defend the County for and from any liabilities, claims, causes of action, and/or penalties made or imposed by any person or entity in connection in any way with work performed by FEC with respect to Component 2 prior to receiving an express Notice to Proceed from the County for such work, and FEC shall pay the County upon demand for any damages, legal fees and costs resulting therefrom.

Component 3 - The third component consists of the preparation of all applicable Reporting Requirements relating to the Work, including, without limitation, all reporting requirements set forth herein, in the Grant Agreement or any exhibits or attachments thereto, including any reporting requirements referenced therein. FEC shall not proceed with any Component 3 Work until the County has issued an express Notice to Proceed with Component 3 Work. FEC hereby holds the County harmless, releases the County and agrees to indemnify and defend the County for and from any liabilities, claims, causes of action, and/or penalties made or imposed by any person or entity in connection in any way with work performed by FEC with respect to Component 3 prior to receiving an express Notice to Proceed from the County for such work, and FEC shall pay the County upon demand for any damages, legal fees, and costs resulting therefrom.

7. **Design standards for the Work.** The County and the FEC agree that the design standards shall meet the objective of providing double stacked railway service for a minimum of twenty (20) years following completion of the Work and are intended to allow the use of the Intermodal Yard for interim operations, as construction and operations allows, with approximately 1500 feet of parallel loading area, or as feasible, on two (2) working tracks. The FEC agrees that the reconstruction of the lead rail and construction of the Intermodal Yard must be performed and completed in accordance with, at a minimum, the following referenced standards, American Railway Engineering and Maintenance-of-Way Association (AREMA) - Manual for Railway Engineering, AREMA - Portfolio of Trackwork Plans, Federal Railroad Administration (FRA) Track Safety Standards Subpart D213.113, Florida East Coast Railway (FEC) Standard Drawings, American Society for Testing and Materials (ASTM), American Concrete Institute (ACI), National Fire Protection Association (NFPA) - National Electrical Code (NEC), Miami-Dade County - Design and Construction Standards.

8. **Procurement of the Work.** As described below, the FEC will procure on the County's behalf and in compliance with Applicable Law, Selected Contractors to provide all required services as may be required to complete the Work ("the Selected Contractors"). In accordance with the timetable set out below, the County will deliver to the FEC (1) design documents for construction of Component 1 of the Work, and (2) a design-build criteria packet for the design and construction of Component 2 of the Work. The Parties anticipate that the three Components described in paragraph 6 shall be procured as follows:

8.1 Component 1 - The Parties anticipate that in accordance with Applicable Law, Component 1 or a portion thereof, the estimate for which does not exceed \$300,000.00, may be awarded to the contractor already selected under the existing Rail Bridge Agreement, and that the unawarded balance of this Component 1 work will be awarded under the procurement process for Component 2 and performed in accordance with the description and conditions stated in Section 6 above.

8.2 Component 3 - The Parties anticipate that in accordance with Applicable Law, Component 3, the estimate for which does not exceed \$300,000.00, will be awarded pursuant to a procurement process agreed to by the County and FEC.

8.3 Component 2 - The Parties anticipate that in accordance with Applicable Law, for Component 2, and any balance of Component 1 not awarded as described in Paragraph 8.1, the FEC will publish and administer a procurement requests for design-build services based on the County's design criteria which will provide for the Selected Contractor to perform the Work with the schedule attached hereto as Exhibit B and any balance of unperformed Component 1 Work. The County and the FEC shall agree on final form of the Design-Build Procurement, which will contain the following key terms:

Maximum Price: Given the known funding amount for these improvements, the procurement documents will require a maximum price.

Best Value: To avoid certain quality issues, any Design-Build procurement request will establish quality and price selection criteria.

Port Approval Rights: The County shall have approval rights of the procurement request in the County's discretion, including but not limited to proposed design documents and subsequent acceptance of the proposed designs, federal grant agreement compliance and County-stipulated procurement practices. The County shall provide approval within 20 working days of complete documents being submitted by the FEC. The FEC shall not enter into a contract with a Selected Contractor for Work in Component 2 until FEC has received written approval from the County. Once a selected contractor is awarded the Component 2 work, FEC shall ensure such contractor does not commence any portion of the Component 2 work until a corresponding written Notice to Proceed has been issued by the County authorizing such work.

Disadvantaged Business Enterprise Goal: The procurement request will set a set a minimum contract goal of 15% of the contract amount for disadvantaged business enterprises as contemplated under 49 CFR Part 26.

Construction Payment Bond: The Selected Contractors will post a sufficient bond naming the FEC and the County as dual obligees, securing payment and performance in the manner required under Florida Statutes Section 255.05. The FEC shall not give notice to proceed to the Selected Contractors without the bond being posted in the amount of the Work and otherwise in full satisfaction of the requirements of Section 255.05 and Applicable Law.

Third Party Beneficiary and Port Point of Contact: FEC shall ensure that the County is an express party beneficiary with rights of enforcement of the contracts with the Selected Contractors. The County will assign its Port's Chief Engineer as the point of contact/coordinator between the County and the FEC during the duration of the Work.

Retainage: Payments to the Selected Contractors shall be subject to retainage in amounts authorized by Applicable Law.

Other Rights: The County will maintain field inspection and final acceptance rights, as well as approval of any rail operating plan on Port property during the construction period. The FEC will be provided access to Port property in order to perform the Work.

Reimbursement Protocol: The County and the FEC will establish reimbursement rules and guidelines to conform with Federal grant requirements and with the stipulations set forth in this Agreement.

FEC Approval Rights: The FEC will have approval rights of the procurement request in its discretion, including but not limited to the stipulations for design, federal grant agreement compliance and rail requirements. In the event that the County and the FEC do not approve a procurement request for the Design-Build and/or Construction Procurement by December 31, 2013, this Agreement shall be null and void and each party shall bear its own costs.

The parties agree the FEC may procure certain items which must be integrated into the Work separately (the "Long-Lead Items"). The parties agree that the Long-Lead items shall be purchased competitively, in a manner acceptable to the County, and reimbursable under the Grant Agreement. The parties further agree that certain of the Long-Lead items may be purchased by the County on a sales tax exempt basis pursuant to Applicable Law. The purchase by the County of such items shall be subject to the approval of such purchase through a Technical Advisement Letter of the Department of Revenue of the State of Florida, and to such conditions as may be set forth in such Technical Advisement Letter or otherwise required by Applicable Law. The FEC shall at all times have full responsibility for scheduling purchases, determining quantities, providing specifications, coordinating delivery dates, acceptance testing, and addressing any and all vendor performance issues in connection with the Long-Lead Items. The separate purchase of the Long-Lead Items as set forth in this Section shall not impair or otherwise affect the obligations of the Selected Contractors to perform in accordance with the terms of the Selected Contractors Contract including its schedule obligations.

The parties further agree that new work incidental and necessary for the completion of the Work and for the full use of the Work may arise during the course of this agreement (the "Incidental Work"). In such event, the parties agree to jointly select a contractor to design and or construct the Incidental Work, and such contractor shall be deemed a Selected Contractor for all purposes under this Agreement. Any such contract for Incidental Work shall be in writing and shall be procured, awarded and performed in accordance with Applicable Law. Incidental Work estimated to cost in excess of \$300,000 shall require a formal amendment to this agreement.

The parties shall jointly establish individual dates for the areas identified in the master Intermodal Yard plan for transfer of site control over to the FEC, and the FEC agrees to be fully responsible for safeguarding the security of the site, and all personnel, materials and supplies on the site, commencing on the dates.

Portions of the Intermodal Yard are adjacent to the ongoing Port of Miami Tunnel (POMT) project and adjacent to and/or within the Seaboard Acres. FEC agrees that no construction activities of the Intermodal Yard, and no Work connected in any way with Components 1 and 2 as described in Section 6 above, will cause

impacts to or interfere with the POMT construction activities, will cause any operational impact to surrounding leaseholds, including, but not limited to the Seaboard Acres, or will interfere with or encroach upon any easement on, under or through Port property. The County design-build criteria packet shall specify the phasing of construction of the Intermodal Yard to reflect the anticipated availability of the POMT temporary construction easement. FEC shall not commence any Component 2 Work until the County and Seaboard have agreed to remove the Seaboard Acres from the area being leased to Seaboard pursuant to the Seaboard Agreement. Notwithstanding the provisions of Section 21 below, FEC agrees to immediately stop any construction activity, or activities, including but not limited to construction staging or traffic, upon written notice by the County. The County shall not be responsible for any additional costs or other damages that may result from such direction to the FEC and/or from any ensuing stoppage of construction activities. Additionally, FEC hereby holds the County harmless, releases the County and agrees to indemnify and defend the County for and from any liabilities, claims, causes of action, or penalties made or imposed by any person or entity in connection in any way with Work performed by or on behalf of FEC subsequent to such written notice to FEC to stop Work and/or associated construction staging and/or traffic, and FEC shall pay the County upon demand for any damages, legal fees and costs resulting therefrom.

9. Compliance with all applicable procurement regulations. The County and the FEC agree that all purchases under this Agreement, including the agreement with the Selected Contractors and all procurements which may occur under the agreement with the Selected Contractors will comply with those procurement regulations applicable to the County's expenditure of federal funds as identified in the Grant Agreement. These include but are not limited to the following provisions:

9.1 E-Verify system ("E-Verify"). The FEC agrees to utilize the U.S. Department of Homeland Security's E-Verify, in accordance with the terms governing use of the system, to confirm the employment eligibility of all persons assigned or authorized to perform work pursuant to or in connection with this Agreement. If at any time the County is no longer required by Applicable Laws, written agreement, contract or any certification made by the County to comply with the foregoing E-Verify requirement for purposes of compliance with the Grant Agreement or other contracts to which it is a party, then any failure of the FEC to comply with such foregoing E-Verify obligation after such time shall not be considered a breach of this Agreement. Additionally, any Design-Build, or other contracts procured under this Agreement shall require such contractor, consultant or firm to confirm the employment eligibility of all of its U.S. employees that will perform work on the Work utilizing E-Verify. A copy of the FEC's E-Verify certification to the Florida Department of Transportation is attached hereto as Exhibit C.

9.2 Davis-Bacon Act. The FEC and any selected contractor will comply with the provisions of the Davis Bacon Act, 40 U.S.C. 3141, *et seq.*

9.3 Payment and Performance Bond Requirements Per Florida Statutes Section 255.05. Prior to commencing any work, when required by of Section 255.05 of the Florida Statutes, the contractors procured by the FEC will post sufficient performance and payment bond (or two separate bonds) satisfactory under Florida Statutes Section 255.05 and naming the FEC and the County as dual obligees. These bonds must insure full payment of any sub contractors on the work. This bond(s) shall be in a form acceptable to the County.

9.4 Insurance Obligations. Prior to commencing any work, the contractors procured by the FEC shall secure the following insurance coverages in the following amounts, and shall retain such coverages from insurance companies rated at least A or better by the Best rating service, with such policies to remain in place until the expiration or proper termination of this Agreement plus sixty-six months:

- a. Railroad General Liability Insurance on a comprehensive basis in an amount not less than \$10,000,000 combined single limit per occurrence for bodily injury, employee injury (FELA) and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage, only for obligations arising under this Agreement.

9.5 Schedule. The design build agreement shall require the Selected Contractors to submit a schedule in form and substance reasonably satisfactory to the parties, which conforms to the dates set forth in this Agreement for the construction activities. The Design-Builder shall update the schedule at a minimum with each payment application.

10. Prosecution of the Work. The FEC shall be primarily responsible for oversight and inspection of the construction activities. The County shall be entitled to inspect and approve the Work as follows:

1. in connection with any payment requisition,
2. in connection with any change order or contract extra;
3. at the time of substantial completion of the Work.

The FEC agrees that it shall not approve a payment requisition, change order request, or request for contract extra or approve substantial or final completion of the Work without the County's written approval. The FEC shall provide to the County notice of any of the above inspections at least five (5) business days prior to the conduct of the inspection. The County may waive appearance in writing of any of the inspections relating to the payment requisitions set forth in paragraph 1 above but shall attend substantial completion and final completion inspections.

11. Selection of the Selected Contractors and other suppliers; Execution of Contracts. The Selected Contractors shall be selected jointly by the County and the FEC. With respect to the selection of the Design-Builder, and any selection under this Agreement requiring the use of a selection committee, each party shall assign two representatives to the selection committee for the project. The selection committee shall select the Selected Contractors based on the application of the criteria set forth in the agreed upon procurement request document, including the preference for selecting the Selected Contractors team whose design concept, and price, allows for the performance of the Work within the monies available for the project. All agreements made pursuant to this Agreement, shall comply with Applicable Law and shall contain those provisions which are necessary and appropriate to implement the requirements of this Agreement and the Grant Agreement. All such agreements shall be executed by the FEC and the Selected Contractors subject to the express written approval of the County. In addition, the County shall approve the execution of any and all contracts for the procurement of Long-Lead Items.

12. Timeline. The parties understand that the funding for the Work is provided by the Grant Agreement with strict deadlines, and that time is of the essence.

13. Change Orders. The contract documents shall provide that the primary responsibility for changes in the Work shall rest with the Selected Contractors. To the extent that the changes are not the responsibility of the Selected Contractors under the contract documents, the same shall be borne by the County only to the extent that they result from unforeseen site conditions that could not have been reasonably anticipated by the Selected Contractors upon review of site conditions and performance of all surveys, tests, borings, and site investigations which would reasonably have been performed by the Selected Contractors in the exercise of professional design and construction practices or which were otherwise identified or specifically required in the contract documents. The FEC shall bear responsibility for any changes in the Work which result from the FEC's failure to properly administer or oversee the Work.

14. County Payment of Costs. To obtain payment from the County to the Selected Contractors, the FEC shall file its requisition on a form or forms prescribed by the County. The County shall expeditiously pay the FEC on a reimbursement basis, upon proof reasonably satisfactory to the County that the FEC has paid the Selected Contractors and its contractors and suppliers involved in the Work and that the same have released any and all claims that they may have against the FEC and/or the County in connection with the Work. The FEC shall also provide the County, upon request, with any and all supporting documentation which the Federal Government may request as a condition of funding under the Grant Agreement. In the event that the work for which the FEC seeks reimbursement is the subject of claims, such amounts shall be reimbursable to the FEC only to the extent that the County in its discretion determines that adequate bonding is in place to secure the claim. Any and all reimbursements by the County to the FEC under this Agreement shall be contingent upon reimbursement by the Federal Government to the County under the Grant Agreement. To facilitate the County's review, the FEC agrees, upon request of the County, to promptly provide the County with access to any

requested cost records, contracts, subcontracts, invoices, plans, specifications, audits, or other records that the County may request and, if requested, to provide the County with copies of same, and to otherwise cooperate with County to facilitate its efficient and thorough review of all Work improvements. However, notwithstanding any other provision of this Agreement, the County may elect by notice in writing not to make a payment on the Work if:

14.1 The FEC or the Selected Contractors shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

14.2 There is then pending litigation with respect to the performance by the FEC or the Selected Contractors of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement, or payments to or potentially due the County in connection with any portion of the Project;

14.3 The FEC or the Selected Contractors shall have taken any action pertaining to the Project which, under this Agreement, requires the approval of the County or has made related expenditures or incurred related obligations without having been advised by the County that same are approved;

14.4 There has been any violation of the conflict of interest provisions contained herein; or

14.5 The FEC or Selected Contractors has been determined by the County to be in default under any of the provisions of the Agreement.

14.6 If, after completion of the Project, any claim is made by the County resulting from an audit for work performed pursuant to this Agreement, the County may offset such amount from payments due the FEC under any other funding agreements if, upon demand, payment of the amount is not made within sixty (60) days to the County. Offsetting amounts by the County shall not be considered a breach of this Agreement. In the event such claims or potential offsets are not identified by County until after payment(s) have been made to the FEC pursuant to this Section, the FEC agrees to refund to the County, upon its request, the full amount of any such post-payment County claims or offsets.

15. Reporting Requirements; County Audit Rights.

15.1 Reporting Requirements. The FEC and the Selected Contractors shall at all times comply with all applicable Reporting Requirements relating to the Work, including, without limitation, all reporting requirements set forth herein, in the Grant Agreement or any exhibits or attachments thereto, including any reporting requirements referenced therein. In addition, as to any information, documents, or reports required to be reported, compiled, tracked, prepared, or monitored by any of the above-referenced

requirements, upon request by the County, the FEC and the Selected Contractors shall provide copies of same to the County (without cost or charge). This section shall survive the expiration or early termination of this Agreement until the expiration of a six month period after all TIGER grant funds are received by the County under the Grant Agreement and all closeout requirements and procedures under the Grant Agreement have been completed.

15.2 Books and Records. For a period of five (5) years after the completion of the last of the Work, or such longer period as may be required by applicable law (the "Books and Records Retention Period"), the FEC and the Selected Contractors shall maintain complete and accurate Work related records for inspection and copying by County, upon request, within the State of Florida. The FEC and the Selected Contractors shall keep and maintain their respective books and records for this Project separate and identifiable from its books and records for their other projects. This section shall survive the expiration or early termination of this Agreement until the expiration of a six month period commencing upon expiration of the Books and Records Retention Period.

15.3 County Audit Rights. The County, at its election and expense, including a County designee and/or inspector general, may audit Project costs and expenses, including the books and records of the FEC (and those of the FEC's consultants, contractors, and subcontractors) and the Selected Contractors relating to the Work, and, in the event the County elects to do so, the FEC and Selected Contractors shall provide their full cooperation in connection therewith, including making available all Project books and records for inspection and copying by Miami-Dade County and/or its designee(s) promptly upon request. The audit rights conferred herein shall expire one year from the expiration of the Books and Records Retention Period (the "Audit Period"). This section shall survive the expiration or early termination of this Agreement until the expiration of a six month period commencing upon expiration of the Books and Records Retention Period.

15.4 County & FEC Right to Reconciliation. Upon completion of a Project audit by the FEC or the County, any Party hereto may seek a reconciliation of payments to the extent such audit reflects any under or over payments, provided, however, such reconciliation can never result in the County paying any amounts in excess of any caps or limits otherwise contained in this Agreement. Such reconciliation must be sought prior to the expiration of the Audit Period. This section shall survive the expiration or early termination of this Agreement until the expiration of a nine month period commencing upon expiration of the Books and Records Retention Period.

16. Acceptance of Work by the County. The FEC shall be primarily responsible for accepting the Work. Notwithstanding, the County shall have the right to accept the Work. Following the date of the County's acceptance of the work (the "Acceptance Date"), the obligation to maintain and repair the Work shall be with the County, subject to the terms and conditions of any applicable use agreement between the FEC and the County.

17. **Warranties; obligations of the parties in the event of latent claims relation to the work.** The FEC agrees to assign to the County, on the Acceptance Date, any and all warranties in connection with the Work, and any and all rights that the FEC may have against the Selected Contractors under the design-build and/or design-build documents, including any and all rights that the FEC may have against the Selected Contractors for construction defects, including latent defects. The FEC agrees to fully cooperate with the County in the prosecution of any claims which the County may have against the Selected Contractors, or any manufacturer, subcontractor or supplier, for any construction defect, including any latent defect, at any time that such defect may be discovered. This obligation shall extend beyond any stated term of this agreement.

18. **No Operating Agreement.** The parties agree that the use of the Port Railway and intermodal facilities, including the use of the on-port tracks that are the subject of the Work, shall be the subject of a separate agreement of the parties, and the operation of the improved railway shall be fully subject to the terms and conditions of that separate contract.

19. **Inspector General and Independent Private Sector Inspector General.**

19.1 Office of Inspector General. The attention of the Parties is hereby directed to Section 2-1076 of the County Code establishing the Miami-Dade County Office of the Inspector General, which has the authority and power to investigate County affairs and review past, present and proposed County programs, accounts, projects, contracts and transactions.

19.2 Independent Private Sector Inspector General. Pursuant to Board Resolution No. R-516-96 and Administrative Order 3-20, the County may authorize, retain and coordinate the services of an independent private sector inspector general ("IPSIG") for construction, capital development, procurement, retail, concession, lease and management agreements and/or contracts and other agreements exceeding \$1 million. The County has, at its expense, appointed the Inspector General as its IPSIG for the Work. The IPSIG may audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the FEC and the County in connection with project design and construction matters under this Agreement. The scope of services performed by the IPSIG may include, but are not limited to, monitoring and investigating compliance with contract specifications; project costs; and investigating and preventing corruption and fraud.

The IPSIG may perform its services at all levels of the construction contracting and procurement process under this Agreement, including but not limited to, project design, establishment of bid specifications, bid submittals, activities of the FEC and its officers, agents and employees. Upon fifteen (15) days' written notice to the FEC from the IPSIG, the FEC shall make all requested non-proprietary project-related records and documents available to the IPSIG for inspection and copying.

The IPSIG shall have the right to examine all documents and records in the FEC's possession, custody or control which, in the IPSIG's reasonable judgment, pertain to the project design and performance of construction matters under this Agreement, including but not limited to, original estimate files; Change Order estimate files; worksheets; proposals and agreements from and with subcontractors and suppliers; all project-related correspondence, memoranda, instructions, financial documents, construction documents, bid and contract documents; back-charge documents; documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received; payroll and personnel records; and supporting documentation for the aforesaid documents and records.

The provisions in this Section shall apply to the FEC and its officers, agents and employees. The FEC shall incorporate the provisions in this Section in all subcontracts executed by the FEC in connection with the performance of this Agreement.

Nothing in this Section shall impair any independent right the FEC may grant to the County to conduct audit or investigative activities. The provisions in this Section are neither intended nor shall they be construed to impose any liability on the County by the FEC or third parties.

20. Coordination. The Parties have endeavored to exchange information and reach agreement on aspects of the Project that will require continued cooperation and coordination. The County and the FEC each agrees that it will provide reasonable and appropriate cooperation to assist in the performance of their respective obligations hereunder provided, however, such general duty to cooperate shall not be construed as requiring the County or the FEC to undertake any actions or to assume any payment obligations in excess of those respective and limited payment and performance obligations set forth herein, and further, with respect to the County, this Section shall not limit or affect the inherent discretion of the County or Port in the exercise of either police power or other governmental authority, and FEC agrees to hold the County harmless from any exercise of the County's discretion in exercising such powers.

21. Termination. The County may terminate this Agreement for the FEC's default if the FEC has breached any term or obligation expressed herein and failed to cure such breach within thirty (30) calendar days after receipt of written notice thereof by the County. Such County termination rights shall supplement and be in addition to any other breach of contract remedies the County may have herein or at common law. The County may also terminate this agreement without cause at any time after first giving the FEC not less than thirty (30) days' written notice; however, in the event the County exercises such right to terminate this Agreement without cause then the FEC's then-future obligations under Sections 4.2, 4.6, and 4.12 hereof shall thereafter not apply. If the County terminates this Agreement without cause, then the County shall pay the FEC the verifiable direct construction costs incurred, after the commencement of this Agreement and up to the date of such termination notice in performing the Work, but shall in no event pay any lost profits of the FEC or the Selected Contractors or any of the Selected Contractors.

22. Miscellaneous.

- a. **No Liability for Exercise of Police Power.** Notwithstanding and prevailing over any contrary term or implication contained in this Agreement, nothing contained in this Agreement, including, without limitation, any County covenant or obligation that may be contained or implied herein to cooperate with, or provide good faith, diligent, reasonable, or other similar efforts to assist the FEC in fulfilling any of its obligations herein or otherwise, shall bind the County Commission, the Zoning Appeals Board, the Planning, Regulation and Department of Miami-Dade County, DERM, the Biscayne Bay Shoreline review Committee, the Building and Zoning Departments of Miami-Dade County or the City, the Seaport Department or any other County, City, federal, or state department, authority, committee or agency to grant, deny, or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental entities in the exercise of its police power; and the County shall be released by the FEC from any liability, responsibility, claims, consequential or other damages, or losses to the FEC, or to any third party(ies) resulting from denial, withholding, or revocation (in whole or in part) of any sought zoning or other changes, variances, permits, licenses, waivers, amendments, or approvals of any kind or nature whatsoever, or in connection with any existing ordinance or Port Tariff or the future enactment of any lawful County ordinance, or rule, order or tariff. This section shall survive the expiration or early termination of this Agreement until the expiration of a six month period after all TIGER grant funds are received by the County under the Grant Agreement and all closeout requirements and procedures referenced in the Grant Agreement have been completed.
- b. **Notices.** All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing and shall be delivered or sent, with copies indicated, by personal delivery, certified mail, fax or overnight delivery service to all Parties as follows (or at such other address as a party shall specify by notice given pursuant to this Section):

To the FEC: Florida East Coast Railway, L.L.C.
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256
Attention: Law Department

To the County: County Mayor
Stephen P. Clark Center
111 N.W. 1st Street, Suite 2900
Miami, Florida 33128

and

Port Director
Port of Miami
1015 North America Way,
2nd Floor
Miami, Florida 33132

With a copy to: Office of the County Attorney
Stephen P. Clark Center
111 N.W. First Street,
Suite 2810
Miami, Florida 33128

Each notice shall be deemed given and received on the day of personal delivery or one business day after its delivery if other than by personal delivery to the address for the respective party with the copies indicated, as provided in this Section.

- c. **Entire Agreement.** This Agreement and the documents that are exhibits to this Agreement contain the entire agreement between the Parties with respect to the subject matter herein, and, upon becoming effective in accordance with the terms of Section 3 hereof, supersede any and all other prior written or oral agreements between them with respect to such subject matter including that certain Assumption Agreement.
- d. **Amendment.** No amendment or modification of this Agreement shall be valid unless in writing and duly executed by all parties hereto and, as to the County, that same is first approved by a duly adopted and effective resolution of the Board of County Commissioners of Miami-Dade County.
- e. **Binding Effect.** This Agreement shall be binding upon the Parties and their respective representatives, successors and permitted assigns (if any).
- f. **Waiver.** Waiver by either Party of any breach of any provisions of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement. Further, in no event shall the making by the County of any payment to the FEC constitute or be construed as a waiver by the County of any breach of covenant, breach of contract or other default on the part of the FEC that may then exist, and the making of such payment by the County while any such default or breach may exist shall in no way impair or prejudice any right or remedy available to the County with respect to such breach or default, regardless of whether such County remedy arises from this Agreement or otherwise.
- g. **Captions.** The captions contained in this Agreement are inserted only as a matter of convenience or reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

- h. **Construction.** In the construction of this Agreement, whether or not so expressed, words used in the singular or in the plural, respectively, include both the plural and the singular and the masculine, feminine and neuter genders include all other genders.
- i. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under Applicable Laws, but if any provision of this Agreement is held to be prohibited by or invalid under Applicable Laws, the Parties shall, to the extent possible, negotiate a revised provision which (a) complies with applicable law, (b) does not alter any of the substantive rights, obligations or liabilities of any party under this Agreement, (c) confers upon the Parties the benefits intended to be conferred by the invalid provision, and (d) is mutually acceptable to the Parties; and the remaining provisions of this Agreement, if capable of substantial performance, shall be enforced as if this Agreement was entered into without the invalid provision.
- j. **Absence of Third Party Beneficiaries.** Except as otherwise expressly provided below, nothing in this Agreement, express or implied, is intended to (a) confer upon any entity or person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement. The FEC further acknowledges and agrees that it is not a third party beneficiary of or to the Grant Agreement.
- k. **Other Documents.** The Parties shall take all such actions and execute all such documents which may be reasonably necessary to carry out the purposes of this Agreement, whether or not specifically provided for in this Agreement; provided, however, that the Parties acknowledge that certain additional actions by MDC may require approval by the Board of County Commissioners and, to the extent such approval is required by law or ordinance, obtaining such approval shall be a condition to MDC's obligations under this Section, and provided further that no such action shall be required if it would require the County's payment or performance obligations hereunder to be increased.
- l. **Governing Law; Exclusive Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without application of conflicts of law principles. Venue for any judicial, administrative or other action to enforce or construe any term of this Agreement or arising from or relating to this Agreement shall lie exclusively in Miami-Dade County, Florida.
- m. **Counterparts.** This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be an original and which, taken together, shall be deemed to be one agreement.

- n. **Absence of County Warranties and Representations.** Neither the County nor any of its officers, employees, contractors, consultants or agents make, or have made, any express, implied, or other representations, promises, statements, opinions, or warranties, written or oral, with respect to the On-Port Project Elements; their viability or constructability; their proposed designs; the qualifications of the FEC-selected designer-builder or contractor; the suitability or adequacy of either's qualifications, experience, financial condition, design, intended construction schedule, equipment, materials, intended means and methods of construction; any as-built conditions at, under, or near the Port of Miami, or otherwise; and, to the extent any representations, warranties, opinions or other statements or communications are or were made, or are or were purported to have been made, they shall be deemed unauthorized, not sanctioned by the County, void *ab initio*, and may not be relied upon by the FEC, its employees, agents, consultants, or contractors, or any third parties for any purpose whatsoever. In entering into this Agreement the County makes no express or implied warranties or representations regarding the constructability of the On-Port Project Elements, the qualifications or abilities of the FEC's selected designer(s) or contractor(s), the propriety, suitability or viability of such designer's proposed or actual designs, or the FEC's or its contractor's intended construction means and methods, or the suitability of its equipment.
- o. **Compliance with Applicable Laws.** At all times each of the Parties hereto shall perform all of their respective obligations hereunder in compliance with all Applicable Laws, building codes, ordinances, rules and regulations, administrative and other orders and tariffs.
- p. **FEC Obligations regarding Indemnity, Hold Harmless, and Duty to Defend.** The FEC shall indemnify, hold the County harmless from, and defend the County and all of its officers, agents, and employees from, for, and against any claims, demands, causes of action, damages, cost, charge, expense, or loss asserted against or incurred by the County that arise from or relate to, in whole or in part, any act, error, omission, negligent act or breach of this Agreement by the FEC, its employees, officers, agents, contractors, subcontractors (of any tier) or consultants (in aggregate, "Indemnitors") during the performance of this Agreement or arising from or relating to any work, act or duty undertaken in connection with the Work except to the limited extent such actions, demands, damages, or loss are caused by a County default hereunder, (each a "Claim" and collectively, "Claims") and excluding any Claim brought by any third party for death, bodily injury or property damage arising during the performance of this Agreement and arising from a collision between a train and vehicle, person or object ("Collision"). When the County receives a claim for damages that may have been caused by the FEC in the performance of services required under this Agreement, the County will forward a copy of such claim to the FEC within 30 days of Port's receipt thereof. Thereafter, the FEC and the County will evaluate

the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the County will determine whether to require the participation of the FEC in the defense of the claim or to require that the FEC defend the County in such claim (at the FEC's cost) as described in this section. The County's failure to promptly notify the FEC of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by the FEC. This section shall survive the expiration or early termination of this Agreement until the expiration or proper termination of this Agreement plus sixty-six months.

- q. **FEC Environmental Indemnity Obligations.** The FEC shall indemnify, hold the County harmless from, and defend the County, from, for, and against any claims, demands, causes of action, damages, penalties, fines, remediation costs, and other loss asserted against or incurred by the County that arise from or relate to, in whole or in part, any actions or omissions of the FEC or any of the respective Indemnitors on or in the vicinity of any County property that result in the violation of any Applicable Laws or otherwise result in the improper or unauthorized release of any hazardous or other regulated material or substance in, onto, beneath, or above any property, submerged lands, or waterways owned or within Miami-Dade County, Florida. This section shall survive the expiration or early termination of this Agreement until the expiration or proper termination of this Agreement plus sixty-six months.
- r. **No Lost Profit or Consequential Damages.** The FEC and the County agree that claims for lost profits and other consequential damages for breach of this Agreement are hereby waived and that lost profit and other consequential damages are not available to any party hereto as an element of damages for breach of any duty or provision contained herein by the other party. This section shall survive the expiration or early termination of this Agreement until the expiration or proper termination of this Agreement plus sixty-six months.
- s. **No Assignment Permitted Without County Consent.** The FEC may not assign or otherwise transfer any rights conferred herein to any third part without the County's prior written consent.
- t. **Restrictions on Lobbying.** No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the County Commission, the judicial branch or any state agency.
- u. **Autonomy.** Both parties agree that this Agreement recognizes the autonomy of the contracting parties and implies no affiliation between the contracting parties. It is expressly understood and intended that the FEC is only a recipient of funding support and is not an agent or instrumentality of the County. Furthermore, the FEC's agents and employees are not agents or employees of the County.

- v. **No Property Interest Conveyed.** Notwithstanding and prevailing over any contrary term or potential implication contained herein, the parties hereto acknowledge and agree that nothing contained in this Agreement conveys, nor is intended to convey, any property interest to either party or any of their respective agents, employees, or contractors.
- w. **Designation of Contact Persons.** For purposes of this Agreement, each party shall designate a contact person to act as the official representative of such party until such party designates another in writing. Initially, the FEC designates its Vice President, Chief Engineer as its representative and the County designates as its representative (or principal point of contact) the Director of the Port of Miami.

[SIGNATURE PAGE TO FOLLOW]

Dated and executed by the Parties as of _____, 2012.

Attest:

MIAMI-DADE COUNTY, a political subdivision
of the State of Florida

Name:

By: _____

Carlos Gimenez
County Mayor

Attest:

FLORIDA EAST COAST RAILWAY, L.L.C.

Sandy Kelley
Name:

By: [Signature]

Name: John Brenholt
Title: Executive Vice President

Seal:

Dated and executed by the Parties as of December 21, 2012.

Attest:

MIAMI-DADE COUNTY, a political subdivision
of the State of Florida

Name: _____

By:  _____

Carlos Gimenez
County Mayor

Attest:

FLORIDA EAST COAST RAILWAY, L.L.C.

Name: _____

By: _____

Name: John Brenholt
Title: Executive Vice President

Seal:

Approved as to form
and Legal Sufficiency


Assistant County Attorney

Date

12/21/12

EXHIBIT A

Exhibit A
Attachment A

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION
WASHINGTON, DC 20590

GRANT AGREEMENT UNDER THE
TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND
RELATED AGENCIES APPROPRIATIONS ACT, 2010 (DIVISION A OF
THE CONSOLIDATED APPROPRIATIONS ACT, 2010 (PUB. L. 111-117,
DEC. 16, 2009)), FOR THE NATIONAL INFRASTRUCTURE
INVESTMENTS DISCRETIONARY GRANT PROGRAM (TIGER II
DISCRETIONARY GRANTS)

MIAMI-DADE COUNTY

PORT OF MIAMI: INTERMODAL & RAIL RECONNECTION PROJECT

Grant Number: DTMA1G11006

Appropriation Data:

7069M01430 2011 1PMRAG0006 0000150002 41010 61006600 - \$22,767,000

This Agreement (the "Agreement" or "Grant Agreement") reflects the selection of Miami-Dade County ("Grantee" or "Recipient") as a Recipient of a grant awarded under the provisions of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010 (Division A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117, Dec. 16, 2009)), regarding National Infrastructure Investments (the "Act"). The grant program under the Act is referred to as "TIGER II Discretionary Grants."

SECTION 1. TERMS AND CONDITIONS OF THE GRANT

- 1.1 This Agreement is entered into between United States Department of Transportation ("DOT" or the "Government") and the Grantee. This Agreement will be administered by The Maritime Administration (also referred to herein as "MARAD").
- 1.2 This Grant is made to the Grantee for the project as described in the Grantee's Technical Application (the "Project") and the negotiated provisions on the Project's material terms

and conditions, including the Project's scope, assurance/confirmation that all required funding has been obtained and committed, and the timeline for completion of the Project.

- 1.3 The Government, having reviewed and considered the Grantee's Technical Application and finding it acceptable, pursuant to the Act awards a TIGER II Discretionary Grant in the amount of Twenty-Two Million Seven Hundred Sixty-Seven Thousand Dollars (\$22,767,000.00), for the entire period of performance (referred to as the "Grant"). This Grant is the total not-to-exceed amount of funding that is being provided under this Agreement. Grantee certifies that not less than Nine Million Eight Hundred Sixty-One Thousand Four Hundred Dollars (\$9,861,400.00) in non-Federal funds are committed to fund the Project in order to satisfy the Act's requirement that at least twenty percent (20%) of the Project's costs are funded by non-Federal sources. The Government's liability to make payments to the Grantee under this Grant Agreement is limited to those funds obligated by the Government under this Agreement as indicated herein and by any subsequent amendments agreed to in writing by all parties.
- 1.4 The Grantee agrees to abide and comply with all terms and conditions of this Agreement and to abide by, and comply with, all requirements as specified in the Exhibits and Attachments, identified in paragraphs 1.5 and 1.6, which are considered as integral parts of this Agreement. Each Exhibit and Attachment identified below is deemed to be incorporated by reference into this Agreement as is fully set out herein.
- 1.5 This Agreement shall also include the following Exhibits as integral parts hereof:
- | | |
|-----------|--|
| Exhibit A | Legislative Authority |
| Exhibit B | General Terms and Conditions |
| Exhibit C | Applicable Federal Laws and Regulations |
| Exhibit D | Grant Assurances |
| Exhibit E | Responsibility and Authority of the Grantee |
| Exhibit F | Reimbursement of Project Costs |
| Exhibit G | Grant Requirements and Contract Clauses |
| Exhibit H | Quarterly Progress Reports: Format and Content |
- 1.6 This Grant Agreement shall also include the following Attachments as integral parts hereof:
- | | |
|--------------|-------------------------------|
| Attachment A | Statement of Work |
| Attachment B | Project Schedule |
| Attachment C | Project Budget |
| Attachment D | Performance Measurement Table |
- 1.7 In the case of any inconsistency or conflict between the specific provisions of this Grant Agreement, the Exhibits, and the Attachments, such inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions and terms of this Grant Agreement; second, by giving preference to the provisions and terms of the

being prepared and that will be a sub-element to the Miami-Dade County Comprehensive Development Master Plan (CDMP).

The PORT OF MIAMI Intermodal and Rail Reconnection Project is consistent with the Adopted Miami-Dade County CDMP's PORT OF MIAMI Master Plan Sub-Element, Objective PM-2 stating that the Port shall expand its cargo-handling and related intermodal facilities to the optimum extent possible by the year 2015 to accommodate the projected cargo tonnages.

It is in particular agreement with Policy PM-2C that states: "The port shall construct additional railroad tracks, marshalling yards, intermodal logistic transfer facilities and other access improvements necessary for the efficient, competitive and rapid movement of cargo."

In addition, the CDMP identifies the existing rail corridors including the Port Lead and the PORT OF MIAMI Tracks, in the Freight Lines 2023.

In August of 2010 the City of Miami City Commission passed a Legislation Resolution supporting the National Infrastructure Investment Grant Application to bring freight rail service to the Port. Additionally the project has the support of the Florida Department of Transportation. The Miami Downtown Development Authority (DDA) also passed a resolution in support of the project. A public involvement program was also undertaken before submission of the TIGER II grant application and all relevant documents from the public involvement program were attached to the application.

Metropolitan Planning Organization (MPO)

The Metropolitan Planning Organization (MPO) for the Miami Urbanized Area Transportation Improvement Program (TIP) includes in the 5-Year Project Listing for 2008-2013, Approved May 22, 2008, under the Multimodal Port Development (Seaport) the following funded projects:

MPO Project No. 648880 Repair the Rail Bascule Bridge, repair railroad bridge to allow movement of containers by rail during off-peak hours, for the year 2008-2009 and a total amount of \$1,500,000 from FSIID funds. The MPO's TIP also identifies under Part Three: Unfunded Priority Needs, Unfunded Summary Table, project SP 6433320 for the Intermodal Container Facility to provide off port storage for empty containers for a funding amount of \$42,93M; and project SP645680 in the amount of \$12M to expand railroad track in container yard. Additionally SP 644650 identified the unfunded need for a Rail Cargo Shuttle Service.

Miami-Dade County's MPO supports the Port of Miami Intermodal and Rail Reconnection Project. The MPO's Freight Transportation Advisory Committee (FTAC) passed Resolution #02-10 supporting the National Infrastructure Investment Act Application to bring Near-Dock Rail to the Port of Miami. The full MPO Board also passed a resolution in support of the project.

2.5 Project's Environmental Approvals and Processes:

SECTION 3. REPORTING REQUIREMENTS

Subject to the Paperwork Reduction Act, and consistent with the purposes of the TIGER II Discretionary Grant Program, Grantee agrees to collect data necessary to measure performance of the Project and to ensure accountability and transparency in Government spending. Grantee further agrees to submit periodic reports to the Government that contain data necessary to measure performance of the Project and to ensure accountability and transparency in Government spending.

- 3.1 **Project Outcomes and Performance Measurement Reports:** Grantee shall collect the data necessary to track and report on each of the performance measures identified in the Performance Measurement Table in Attachment D and report results of the data for each measure to the Government periodically, according to the reporting schedule identified in Attachment D. Furthermore, Grantee agrees to provide an Initial Pre-project Report and a final Project Outcomes Report to the Government.
 - 3.1.1 The Pre-project Report shall consist of current baseline data for each of the performance measures specified in the Performance Measurement Table in Attachment D. The Pre-project Report shall include a detailed description of data sources, assumptions, variability, and the estimated level of precision for each measure. Grantee shall submit the report to the Government by April 30, 2011. Grantee shall represent that the data in the Pre-project Report is current as of December 31, 2010.
 - 3.1.2 Grantee shall submit interim Project Performance Measurement Reports to the Government for each of the performance measures specified in the Performance Measurement Table in Attachment D following Project completion. Grantee shall submit reports at each of the intervals identified for the duration of the time period specified in the Performance Measurement Table in Attachment D. Grantee shall represent that the data in each of the interim Project Performance Reports is current as of the final date of the reporting interval.
 - 3.1.3 The Project Outcomes Report shall consist of a narrative discussion detailing Project successes and/or the influence of external factors on Project expectations. Grantee shall submit the Project Outcomes Report to the Government by April 30, 2017, which includes an *ex post* examination of project effectiveness in relation to the Pre-project Report baselines. Grantee shall represent that the data in the Project Outcomes Report is current as of December 31, 2016.
 - 3.1.4 Grantee shall submit each report via email to each of the Government contacts identified in paragraph 3.5 of this Agreement and, additionally, to outcomes@dot.gov. The email shall reference and identify in the email subject line the TIGER Grant Number and provide the number of the Performance Measures report submitted, e.g., Re: [Modal] Tiger Grant No. 52 - Performance Measure Report No. 1 or 2 or 3, etc.

of each Agreement year. The Annual Budget Review and Program Plan shall provide a detailed schedule of activities, estimate of specific performance objectives, include forecasted expenditures, and schedule of milestones for the upcoming Agreement year. If there are no proposed deviations from the Approved Detailed Project Budget, attached hereto as Attachment C, the Annual Budget Review shall contain a statement stating such. The Grantee will meet with the Government to discuss the Annual Budget Review and Program Plan. If there is an actual or projected project cost increase, the annual submittal should include a written plan for providing additional sources of funding to cover the project budget shortfall or supporting documentation of committed funds to cover the cost increase. To the extent the annual budget update deviates from the approved project budget by more than 10 percent, then work proposed under the Annual Budget Review and Program Plan shall not commence until written approval from the Government is received.

- 3.4 **Closeout Process:** Closeout occurs when all required project work and all administrative procedures described in Title 23 (or 49 C.F.R. part 18 or part 19, as applicable) are completed, and the Government notifies the Grantee and forwards the final Federal assistance payment, or when the Government acknowledges Grantee's renittance of the proper refund. Within 90 days of the Project completion date or termination by the Government, the Grantee agrees to submit a final Federal Financial Report (SF-425), a certification or summary of project expenses, and third-party audit reports.
- 3.5 All notices or information required by this Agreement should be addressed and sent to all the Government contacts as follows:

Mr. Robert Bouchard
Grants Officer Technical Representative
MARAD
1200 New Jersey Ave, SE
MAR-310
Washington, DC 20590
202-366-5076
Robert.Bouchard@dot.gov

Miss Judy Bowers
Grants Officer
1200 New Jersey Ave, SE
MAR-380, W28-201
Washington, DC 20590
202-366-1913
Judy.Bowers@dot.gov

Mr. Robert Miner
Office of the Secretary of Transportation
1200 New Jersey Ave, SE (W84-224)
Washington, DC 20590

Termination Date." Unless otherwise agreed to by the parties, this Agreement shall terminate on the Grant Termination Date.

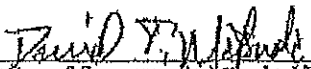
- 5.3 Either party (the Government or the Grantee) may seek to amend or modify this Agreement prior to the Grant Termination Date by written notice (formal letter) to the other party and in accordance with 49 C.F.R. parts 18.43 and 18.44. The Grant Agreement may be amended or modified only on the mutual written agreement by both parties.

SECTION 6. AWARD AND EXECUTION OF GRANT AGREEMENT

There are three (3) identical counterparts of this Agreement in hard copy; each counterpart is to be fully signed in writing by the parties and each counterpart is deemed to be an original writing having identical legal effect. Upon final execution of this Agreement by the Grantee, the effective date shall be the date the Government awarded funding under this Agreement as set forth below. When signed and dated by the authorized official of the Government, this instrument will constitute an Award under the Act.

EXECUTION BY THE GOVERNMENT

Executed this 17th day of March, 2011.


Signature of Government's Authorized Representative
Maritime Administration

David T. Matsuda
Name of Government's Authorized Representative
Maritime Administrator
Title

EXECUTION BY THE GRANTEE/RECIPIENT

By signature below, the Grantee/Recipient acknowledges that it accepts and agrees to be bound by this Agreement.

Executed this 15th day of MARCH, 2011.

**ATTACHMENT A
STATEMENT OF WORK**

The portion of the overall Intermodal & Rail Reconnection project being funded by the TIGER II Grant entails three principal on-Port improvements:

- Bascule Bridge: The rehabilitation of the non-operational bascule bridge connecting the Port of Miami to the mainland;
- Rail Lines and Gantry System: Construction of the on-port rail lines and gantry system. The improvements of between 9,000 and 12,000 feet of rail will include an on-port lead track and three or more parallel tracks of approximately 3,000 feet each. This portion of the project will include a by-pass rail siding and required equipment for the on-port intermodal rail facility;
- Intermodal Apron: Construction of an intermodal apron running parallel to the full length of the tracks. The apron will include security fencing, a radiation portal and inspection infrastructure, and crossing improvements.

In addition to the on-Port Project improvement elements listed above, which on-Port elements will be funded by the TIGER II Grant, the Florida East Coast Railway, LLC ("FEC"), with financial assistance from the State of Florida Department of Transportation (FDOT), will be making major off-Port improvements to the FEC's 4.4 mile port rail lead line. This 4.4 mile Port Lead is an existing off-port rail line that runs directly to the Port on the FEC owned right-of-way. The off-Port elements are an integral part of the Project in order to meet the matching requirements of Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010 (Division A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117, Dec. 16, 2009)), and are subject to the terms and conditions of the TIGER II Grant Agreement executed between the Port of Miami and the United States Department of Transportation.

The improvements to the (off-Port) Port Lead, to be undertaken by the FEC with the assistance of FDOT, include the reconstruction of all the tracks. The existing track is 90-115 lb rail (the number represents the weight of the rail as measured by a yard in length). New 136 lb rail and ties will be used and the existing rail lines will be removed and recycled. The detailed scope of services includes: existing track removal; site preparation (clearing and grading); track construction; and construction of Quiet Zones at roadway intersections. The contemplated scope of work will also include reconstruction of the southwest quadrant connection at Little River which will allow trains to move from the Port to the FEC Hialeah Yard without stopping and making reverse moves as presently required.

Reconstruction of the tracks will provide the capability for trains to operate at speeds of up to 30 miles-per-hour over the corridor. The relocation of tracks associated with this project will allow for the potential introduction of passenger rail within the same rail corridor. The project will upgrade existing active grade-crossing equipment (gates and flashers) to the extent that a

three (3) or more tracks parallel to each other will be constructed within the Port Intermodal Yard.

Three or more tracks of approximately 3,000 feet will be constructed. Apron areas will be designed to allow simultaneous loading of multiple trains. An additional by-pass siding will provide for the efficient movement of locomotives.

- Access Rail Track will include the installation of a railroad switch to the three tracks within the Yard;
- Loading system comprised of equipment to transfer containers to and from trains.

Construction of an Intermodal Apron and Crossing Improvements

The total space to be occupied by the Intermodal Yard will be approximately 600,000 square feet (13.77 acres). The detailed scope of services includes:

- Removal and replacement of existing pavement; removal of existing rail line; proposed tracks R.O.W. bed preparation; demolition or removal (as needed) of certain existing structures;
- Construction of Apron Area - filling and grading to create a stable base for the train tracks and the apron area. The apron area will parallel the tracks;
- Construction of drainage structures and placement of asphalt paving in the apron area. Installation of lights, fencing and gates. For security purposes, the facility will include radiation portal(s) and Customs and Border Patrol secondary inspection infrastructure, as required.

**ATTACHMENT C
PROJECT BUDGET**

Below are the summary revised construction costs for the On-Port Project Elements:

Summary of TIGER II Discretionary Grant Project Construction Costs (for On-Port Elements)

Item	
Bridge Reconstruction	\$3,500,000
Port Intermodal Rail Line Tracks and Gantry System	\$9,567,000
Port Rail Intermodal Apron	<u>\$12,000,000</u>
Total (On-Port Improvement Costs)	\$25,067,000

Summary of Funding Sources for On-Port Elements:

TIGER II Discretionary Grant	\$22,767,000
Port of Miami Funding	<u>\$2,300,000</u>
Total (On-Port Improvement Funds)	\$25,067,000

Below are the summary revised construction costs for the Off-Port Project Elements to be designed, constructed, and maintained by the IREC:

Reconstruction and Relocation of FEC Port Lead & Construction of Southwest Connection at Little River	\$21,840,800
FEC Hialeah Rail Yard Track Reconfiguration and Improvements	<u>\$ 2,400,000</u>
Total (Off-Port Improvement Costs)	\$24,240,800
Total (Off-Port Improvement Funds - from IREC)	\$24,240,800

TOTAL ON-PORT AND OFF-PORT **\$49,307,800**

			Quarterly reports for a period of 3 years, beginning after project completion.
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EXHIBIT B
GENERAL TERMS AND CONDITIONS

1. The Grantee shall be responsible for ensuring that the Project is financed, constructed, operated and maintained in accordance with this Agreement and in compliance with all applicable Federal laws, regulations and policies.
2. The maximum obligation of the Government payable under this award, hereinafter referred to as the "Grant," shall be the award as specified in section 1.3 of the Agreement, subject to all the terms and conditions in this Agreement and of all other Federal grant awards funding the Project. Once the Government issues its approval of the expenditure of TIGER II Discretionary Grant funds for a particular Project or segment of the Project, funding will then be authorized.
3. Payment of the Grant will be made pursuant to and in accordance with 49 C.F.R. Parts 18 and 19 (to the extent that a non-governmental grantee receives grant funding), and the provisions of such regulations and procedures as the Government may prescribe. Final determination of the Grant's expenditures may be based upon a final review of the total amount of agreed project costs and settlement will be made for adjustments to the Grant amount in accordance with applicable government-wide cost principles under 2 C.F.R. 225 (State and Local Governments); 2 C.F.R. 215 (Higher Education Institutions); and 2 C.F.R. 230 (Non-Profit Organizations). If there are any differences between the requirements of 49 C.F.R. Parts 18 and 19.
4. The Grantee agrees to notify the Government within 14 calendar days of any change in circumstances or commitments that adversely affect the Grantee's plan to complete the Project as is described in Attachments A-C to this Agreement. In its notification, the Grantee shall advise the Government of what actions it has taken or plans to take to ensure completion of the Project and shall reaffirm its commitment to the Government as set forth in this Agreement. The Government is not responsible for any funding shortfalls regarding the non-TIGER II Discretionary Grant amount share. The TIGER II Discretionary Grant Amount will remain unchanged. (See Section 5 of the Agreement regarding termination).
5. The Grantee agrees to carry out and complete the Project without undue delays and in accordance with the terms hereof, including the Project Schedule set out in Attachment B, and such regulations and procedures as the Government may prescribe.
6. The Grantee has submitted a request for Federal assistance, hereinafter referred to as the "Technical Application," hereby incorporated by reference into this Agreement and the Government is relying upon the Grantee's assurances, certifications, and other representations made in the Technical Application, or any other related documents submitted to the Government; and, in its submissions, the Grantee has demonstrated justification for the Project, and has demonstrated the financial and technical feasibility of the Project, including the ability to start construction quickly upon receipt of the Grant; to expend Grant funds once construction starts; and to receive all necessary environmental, state and local planning, and legislative approvals necessary for the Project to proceed in accordance with the Project Schedule.

12. The Government shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this Agreement.

13. The Grantee agrees to: (1) promote the creation of job opportunities for low-income workers through the use of best practices hiring programs and utilization of apprenticeship (including pre-apprenticeship) programs; (2) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses; (3) make effective use of community-based organizations in connecting low income or unemployed workers with economic opportunities; (4) give priority consideration to doing business under the grant with firms that have a sound track record on labor practices and compliance with Federal laws ensuring that American workers are safe and treated fairly; and (5) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals—regardless of race gender, age, disability, and national origin—benefit from the Recovery Act.

An example of a best practice under (5) would be to incorporate key elements of the Department's disadvantaged business enterprise (DBE) program (see 49 CFR Part 26) in contracts under this grant. This practice would involve setting a DBE contract goal on contracts under this grant that have subcontracting possibilities. The goal would be to reflect the amount of DBE participation on the contract that the recipient would expect to obtain absent the effects of discrimination and consistent with the availability of certified DBE firms to perform work under the contract. When a DBE contract goal has been established by a recipient, the contract would be awarded only to a bidder/officer who has met or made documented, good faith efforts to reach the goal. Good faith efforts are defined as "efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement." Recipients must provide the Department a plan for incorporating the above best practice into its implementation of the grant within 30 days following execution of this grant agreement. If the recipient is not able to substantially incorporate Part 26 elements in accordance with the above-described best practice, the recipient agrees to provide the Department with a written explanation and an alternative program for ensuring the nondiscriminatory use of contractors owned and controlled by, socially and economically disadvantaged individuals.

14. The Government encourages the Grantee and the State Department of Transportation acting as the limited agent on behalf of the Grantee (if applicable), to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies that bar text messaging while driving company-owned or -rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official government business or when performing any work for or on behalf of the Government. See Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/09-24203.htm>) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2010-01, Feb. 2, 2010, available at http://www.dot.gov/os/m60/Financial_Assistance_Management_Home/TAPL_2010-01.pdf).

EXHIBIT C

APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into the Agreement the Grantee assures and certifies, with respect to this grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this project. Performance under this Agreement shall be governed by and in compliance with the following requirements as applicable to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to the Agreement include but are not limited to the following:

General Federal Legislation

- a. Davis-Bacon Act - 40 U.S.C. 3141, et seq.
- b. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- c. Hatch Act - 5 U.S.C. 1501, et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title - 42 U.S.C. 4601, et seq.
- e. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470f
- f. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469a through 469c.
- g. Native American Graves Protection and Repatriation Act - 25 U.S.C. 3001, et seq.
- h. Clean Air Act, P.L. 90-148, as amended
- i. Section 404 of the Clean Water Act, as amended 33 U.S.C. 1251, et seq.
- j. Section 7 of the Endangered Species Act, P.L. 93-203, as amended.
- k. Coastal Zone Management Act, P.L. 92-583, as amended.
- l. Flood Disaster Protection Act of 1973 - Section 102(h) - 42 U.S.C. 4012a
- m. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- n. American Indian Religious Freedom Act, P.L. 95-341, as amended
- o. Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101, et seq.
- p. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended - 42 U.S.C. 4541, et seq.
- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd through 290dd-2
- r. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.
- s. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. 8373
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 3701, et seq.
- u. Copeland Anti-Idockhack Act, as amended - 18 U.S.C. 874 and 40 U.S.C. 3143
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended - 16 U.S.C. 1271, et seq.
- x. Federal Water Pollution Control Act, as amended - 33 U.S.C. 1251-1376
- y. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.
- z. Americans with Disabilities Act of 1990 - 42 U.S.C. 12101, et seq.
- aa. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. 1681 through 1683, and 1685 through 1687

- f. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States - 29 C.F.R. Part 3
- g. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) - 29 C.F.R. Part 5
- h. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) - 41 C.F.R. Parts 60, et seq.
- i. Contractor Qualifications - 48 C.F.R. Part 9
- j. Uniform administrative requirements for grants and cooperative agreements to state and local governments - 49 C.F.R. Part 18
- k. New Restrictions on Lobbying - 49 C.F.R. Part 20
- l. Nondiscrimination in Federally Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 - 49 C.F.R. Part 21
- m. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs - 49 C.F.R. Part 24
- n. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance - 49 C.F.R. Part 25
- o. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance - 49 C.F.R. Part 27
- p. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation - 49 C.F.R. Part 28
- q. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors - 49 C.F.R. Part 30
- r. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) - 49 C.F.R. Part 32
- s. DOT's implementing ADA regulations, including the ADA Accessibility Guidelines in Part 37, Appendix A - 49 C.F.R. Parts 37 and 38
- t. Procedures for Transportation Workplace Drug and Alcohol Testing Programs - 49 C.F.R. Part 40
- u. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs - 49 C.F.R. Part 26
- v. Preference for Privately Owned Commercial U.S. Flag Vessels - 46 C.F.R. Part 381.

Office of Management and Budget Circulars

- a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments
- b. A-102 - Grants and Agreements with State and Local Governments
- c. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

EXHIBIT D 1

TITLE VI ASSURANCE

(Implementing Title VI of the Civil Rights Act of 1964, as amended)

**ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-
ASSISTED PROGRAMS AND ACTIVITIES RECEIVING OR
BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE**

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act,
as amended)

49 C.F.R. Parts 21, 25, 27, 37 and 38

By signing and submitting the Technical Application and by entering into the Agreement under the
TIGER II Discretionary Grant program, the Grantee hereby agrees that:

1. As a condition to receiving any Federal financial assistance from the U.S. Department of Transportation, Grantees will comply with: Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d-42 U.S.C. 2000d-4; all requirements imposed by or pursuant to: Title 49, Code of Federal Regulations, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964; and other pertinent directives so that no person in the United States shall, on the grounds of race, color, national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Grantee receives Federal financial assistance from the Department of Transportation. This assurance is required by Title 49, Code of Federal Regulations, Section 21.7(a).

2. As a condition to receiving any Federal financial assistance from the U.S. Department of Transportation, Grantees will comply with: Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, which prohibit discrimination on the basis of sex. As a condition to receiving any Federal financial assistance from the U.S. Department of Transportation, it will comply with: the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.), the Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1101 et seq.), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended (42 U.S.C. 4541 et seq.); and any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and the requirements of any other nondiscrimination statute(s) which may apply to the Grantee.

EXHIBIT D 2

DISCLOSURE OF LOBBYING ACTIVITIES

Certification for Contracts, Grants, Loans, and Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and grant agreements) and that all subgrantees shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

8. The Grantee may, but is not required to, provide the site for the performance of work done in connection with the specific grant. For the provision of services pursuant to the Agreement, workplaces include visitations, maintenance sites, headquarters office locations, training sites and any other workplaces where work is performed that is supported by the grant award. If the Grantee does so, please insert in Section 4 of the Agreement the following information from subsection (a) below:

(a) Identify the Places of Performance by listing the street address, city, county, state, zip code. Also identify if there are workplaces on file that are not identified in this section of the Agreement.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions

The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER II Discretionary Grant program, the Grantee is providing the assurance and certification set out below.

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

5. **Minimum Wage Rates.** It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this Agreement that involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 3141, et seq.), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

6. **Engineering and Design Services.** It will award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under the Brooks Act (40 U.S.C. 1101-1104) or an equivalent qualifications-based requirement prescribed for or by the Grantee as approved by the Secretary.

7. **Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

8. **Relocation and Real Property Acquisition.** (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 C.F.R. Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 C.F.R. Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 C.F.R. Part 24.

Attn: Tammy Cornett,
AMZ-160, HQ Bldg., Room 272F
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169

2. The Grantee shall have entered into obligations for services and goods associated with the Project prior to seeking reimbursement from the Government. Reimbursement will only be made for expenses incurred after execution of a project agreement.

3. The Grantee shall ensure that the funds provided by the Government are not misappropriated or misdirected to any other account, need, project, line-item, or the like.

4. Any Federal funds not expended in conjunction with the Project will remain the property of the Government.

5. Financial Management System: By signing this Agreement, the Grantee verifies that it has, or will implement, a financial management system adequate for monitoring the accumulation of costs and that it complies with the financial management system requirements of 49 C.F.R. Part 18 and Title 23. The Grantee's failure to comply with these requirements may result in Agreement termination.

6. Allowable Costs: Determination of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., OMB Circular A-87 (2 C.F.R. Part 225). Disallowed costs are those charges determined to not be allowed in accordance with the applicable Federal cost principles or other conditions contained in this Agreement.

1) **Applicability.** Unless the Grantee (hereinafter in this section referred to as "you") are exempt as provided in paragraph d. of this section, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in subsection a. of this section).

2) **Where and when to report.**

a. You must report each obligating action described in subsection a.1. of this section to <http://www.fsrs.gov>.

b. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3) **What to report.** You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. **Reporting Total Compensation of Resipient Executives.**

1) **Applicability and what to report.** You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

a. the total Federal funding authorized to date under this award is \$25,000 or more;

b. in the preceding fiscal year, you received—

(1) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

c. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/exccomp.htm>.)

2) **Where and when to report.** You must report executive total compensation described in subsection b.1. of this section:

a. As part of your registration profile at <http://www.eor.gov>.

b. By the end of the month following the month in which this award is made, and annually thereafter.

1) Entity means all of the following, as defined in 2 CFR part 25:

- a. A Governmental organization, which is a State, local government, or Indian tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization;
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2) Executive means officers, managing partners, or any other employees in management positions.

3) Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. 218 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4) Subrecipient means an entity that:

- a. Receives a subaward from you (the recipient) under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

5) Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

a. Salary and bonus,

b. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

EXHIBIT H

QUARTERLY PROGRESS REPORTS: FORMAT AND CONTENT

The Paperwork Reduction Act approval is still pending. At this time, this Exhibit is included for informational purposes. Grantees are requested to retain data for potential future reporting, to ensure that DOT (Government) records are complete (assuming clearance is granted).

1. The purpose of the calendar quarterly progress reports under the Agreement for the TIGER II Discretionary Grants program is to ensure that the project budget and schedule will be maintained to the maximum extent possible, that the project will be completed with the highest degree of quality, and that compliance with Federal regulations will be met. To that end, along with the quarterly progress, as outlined below, the Grantee should also submit a Federal Financial Report (SF-425) with each quarterly progress report.
2. The Grantee should develop a project reporting and tracking system to collect, assess and maintain project status information and data that is timely, independent, and accurate. This system should provide current information on project prosecution, progress, changes, and issues. This information should be used to identify trends and forecast project performance and to identify and proactively address challenges to eliminate major project surprises.
3. The need to continuously and accurately report cost increases; schedule changes; deficient quality items; and the causes, impacts, and proposed measures to mitigate these issues is paramount to effectively managing, administering, and protecting the public investment in the project. Any apparent reporting deficiencies or questionable data should be completely resolved. Ultimately, the Grantee and the Government must be fully aware of the complete status of the project, and therefore be in a position to take appropriate action if necessary.
4. A quarterly cost, schedule, and status report will be produced by the Grantee, and a quarterly status meeting will be held with the Grantee, the Government and other applicable agencies in attendance. The quarterly status meetings should discuss the project costs, schedules, quality issues, compliance with Federal requirements, and other status items in sufficient enough detail to allow all involved parties to be fully aware of the significant status issues and actions planned to mitigate any adverse impacts. In addition, significant issues occurring between status meetings must be communicated immediately without waiting for the next regularly scheduled meeting, with any highly significant or sensitive issues elevated immediately to the executive leadership.
5. The following is the required format for the quarterly progress reports. At the discretion of the Government, modifications or additions can be made in order to produce a quarterly reporting format that will most effectively serve both the Grantee and the Government. It is recognized that some projects will have a more extensive quarterly status than others. In the case of smaller projects, the content of the quarterly reports will be streamlined and project status meetings will be held on a less frequent basis. Please note that the initial quarterly progress report should include a detailed description, and where appropriate, drawings, of the items funded.

status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.

(d) **Project Schedule.** An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for quarterly reporting purposes, with the ultimate format to be agreed upon between the Grantee and the Government. It is imperative that the master program schedule be integrated, i.e., the individual contract milestones tied to each other, such that any delays occurring in one activity will be reflected throughout the entire program schedule, with a realistic completion date being reported. Narratives, tables, and/or graphs should accompany the updated master program schedule, basically detailing the current schedule status, delays and potential exposures, and recovery efforts. The following information should also be included:

- Current overall project completion percentage vs. latest plan percentage.
- Completion percentages vs. latest plan percentages for major activities such as right-of-way, major or critical design contracts, major or critical construction contracts, and significant force accounts or task orders. A schedule status description should also be included for each of these major or critical elements.
- Any delays or potential exposures to milestone and final completion dates. The delays and exposures should be quantified, and overall schedule impacts assessed. The reasons for the delays and exposures should be explained, and initiatives being analyzed or implemented in order to recover the schedule should be detailed.

(e) **Project Cost.** An updated cost spreadsheet reflecting the current forecasted cost vs. the latest approved budget vs. the baseline budget should be included in this section. One way to track project cost is to show: (1) Baseline Budget, (2) Latest Approved Budget, (3) Current Forecasted Cost Estimate, (4) Expenditures or Commitments To Date, and (5) Variance between Current Forecasted Cost and Latest Approved Budget. Line items should include all significant cost centers, such as prior costs, right-of-way, preliminary engineering, environmental mitigation, general engineering consultant, section design contracts, construction administration, utilities, construction packages, force accounts/task orders, wrap-up insurance, construction contingencies, management contingencies, and other contingencies. The line items can be broken-up in enough detail such that specific areas of cost change can be sufficiently tracked and future improvements made to the overall cost estimating methodology. A Program Total line should be included at the bottom of the spreadsheet. Narratives, tables, and/or graphs should accompany the updated cost spreadsheet, basically detailing the current cost status, reasons for cost deviations, impacts of cost overruns, and efforts to mitigate cost overruns. The following information should be provided:

- Reasons for each line item deviation from the approved budget, impacts resulting from the deviations, and initiatives being analyzed or implemented in order to recover any cost overruns.
- Transfer of costs to and from contingency line items, and reasons supporting the transfers.
- Speculative cost changes that potentially may develop in the future, a quantified dollar range for each potential cost change, and the current status of the speculative change. Also, a comparison analysis to the available contingency amounts should be included, showing that

EXHIBIT B

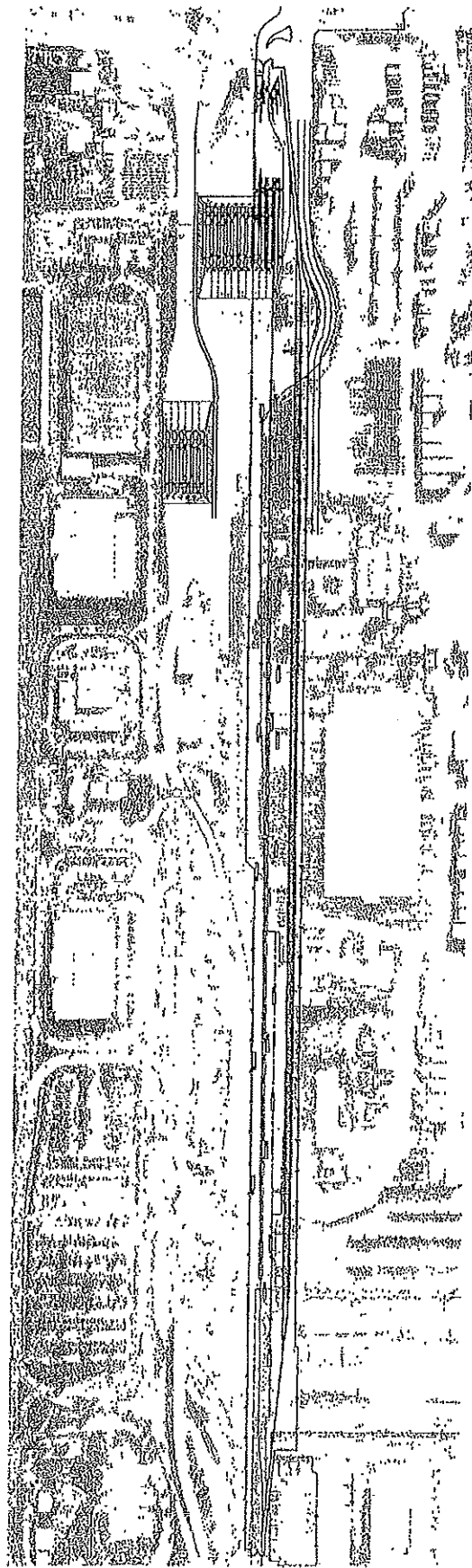
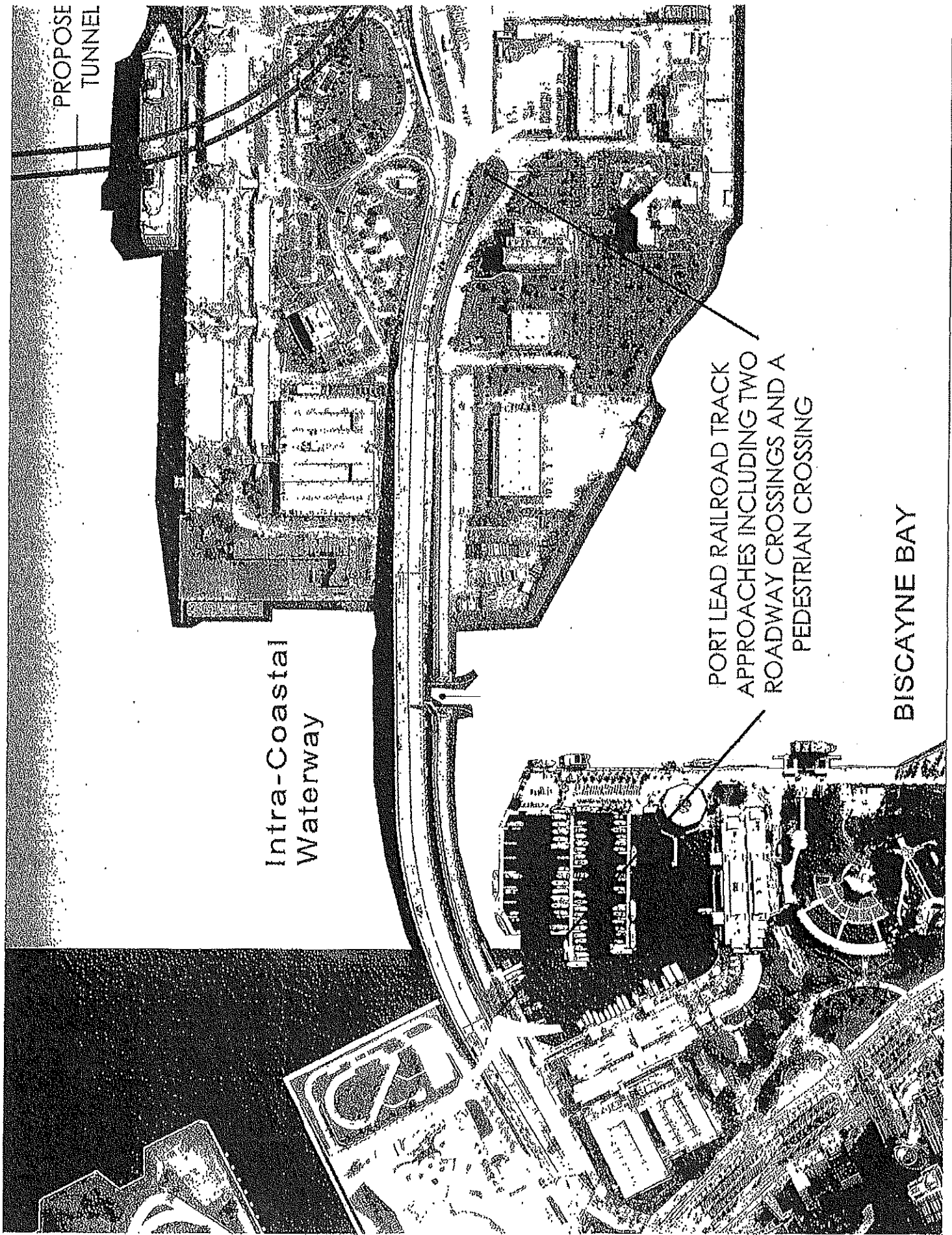


EXHIBIT C



BISCAYNE BAY